

AMENDED IN ASSEMBLY AUGUST 21, 1998

AMENDED IN ASSEMBLY JULY 30, 1998

AMENDED IN ASSEMBLY JUNE 23, 1998

AMENDED IN SENATE JANUARY 21, 1998

AMENDED IN SENATE JANUARY 5, 1998

AMENDED IN SENATE APRIL 15, 1997

AMENDED IN SENATE APRIL 3, 1997

SENATE BILL

No. 704

Introduced by Senator Polanco

February 25, 1997

An act to amend Section 7159 of the *Business and Professions Code*, and to amend Section 3260.1 of the Civil Code, relating to contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 704, as amended, Polanco. Contracting.

The Contractors' State License Law provides for the licensing and regulation of contractors by the Contractors' State License Board.

This bill would require the board to hold a public hearing and to recommend ways to enhance consumers' financial protection when contracting for residential construction services, and to present a detailed report to the Legislature and Governor by April 1, 1999.

This bill would also make a technical cross-reference change to a provision of the Civil Code.

Existing provisions of the Contractors' State License Law specify certain contract requirements and related provisions with respect to home improvement contracts and make violations of these provisions a crime punishable as a misdemeanor.

This bill would reinstate a requirement that an indictment or information shall be brought, or a complaint filed, for a violation of these provisions, within 3 years from the effective date of the contract.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 7159 of the Business and*
2 *Professions Code is amended to read:*

3 7159. This section applies only to home improvement
4 contracts, as defined in Section 7151.2, between a
5 contractor, whether a general contractor or a specialty
6 contractor, who is licensed or subject to be licensed
7 pursuant to this chapter with regard to the transaction
8 and who contracts with an owner or tenant for work upon
9 a residential building or structure, or upon land adjacent
10 thereto, for proposed repairing, remodeling, altering,
11 converting, modernizing, or adding to the residential
12 building or structure or land adjacent thereto, and where
13 the aggregate contract price specified in one or more
14 improvement contracts, including all labor, services, and
15 materials to be furnished by the contractor, exceeds five
16 hundred dollars (\$500).

17 Every home improvement contract and every
18 contract, the primary purpose of which is the
19 construction of a swimming pool, is subject to this section.
20 Every contract and any changes in the contract subject
21 to this section shall be evidenced by a writing and shall be
22 signed by all the parties to the contract. The writing shall
23 contain all of the following:



1 (a) The name, address, and license number of the
2 contractor, and the name and registration number of any
3 salesperson who solicited or negotiated the contract.

4 (b) The approximate dates when the work will begin
5 and on which all construction is to be completed.

6 (c) A plan and scale drawing showing the shape, size,
7 dimensions, and construction and equipment
8 specifications for a swimming pool and for other home
9 improvements, a description of the work to be done and
10 description of the materials to be used and the equipment
11 to be used or installed, and the agreed consideration for
12 the work.

13 (d) If the payment schedule contained in the contract
14 provides for a downpayment to be paid to the contractor
15 by the owner or the tenant before the commencement of
16 work, the downpayment may not exceed two hundred
17 dollars (\$200) or 2 percent of the contract price for
18 swimming pools, or one thousand dollars (\$1,000) or 10
19 percent of the contract price for other home
20 improvements, excluding finance charges, whichever is
21 less.

22 (e) A schedule of payments showing the amount of
23 each payment as a sum in dollars and cents. In no event
24 may the payment schedule provide for the contractor to
25 receive, nor may the contractor actually receive,
26 payments in excess of 100 percent of the value of the work
27 performed on the project at any time, excluding finance
28 charges, except that the contractor may receive an initial
29 downpayment authorized by subdivision (d). With
30 respect to a swimming pool contract, the final payment
31 may be made at the completion of the final plastering
32 phase of construction, provided that any installation or
33 construction of equipment, decking, or fencing required
34 by the contract is also completed. A failure by the
35 contractor without lawful excuse to substantially
36 commence work within 20 days of the approximate date
37 specified in the contract when work will begin shall
38 postpone the next succeeding payment to the contractor
39 for that period of time equivalent to the time between
40 when substantial commencement was to have occurred

1 and when it did occur. The schedule of payments shall be
2 stated in dollars and cents, and shall be specifically
3 referenced to the amount of work or services to be
4 performed and to any materials and equipment to be
5 supplied. With respect to a contract that provides for a
6 schedule of monthly payments to be made by the owner
7 or tenant and for a schedule of payments to be disbursed
8 to the contractor by a person or entity to whom the
9 contractor intends to assign the right to receive the
10 owner's or tenant's monthly payments, the payments
11 referred to in this subdivision mean the payments to be
12 disbursed by the assignee and not those payments to be
13 made by the owner or tenant.

14 (f) A statement that, upon satisfactory payment being
15 made for any portion of the work performed, the
16 contractor shall, prior to any further payment being
17 made, furnish to the person contracting for the home
18 improvement or swimming pool a full and unconditional
19 release from any claim or mechanic's lien pursuant to
20 Section 3114 of the Civil Code for that portion of the work
21 for which payment has been made.

22 (g) The requirements set forth in subdivisions (d),
23 (e), and (f) do not apply when the contract provides for
24 the contractor to furnish a performance and payment
25 bond, lien and completion bond, bond equivalent, or joint
26 control approved by the registrar covering full
27 performance and completion of the contract and the
28 bonds or joint control is or are furnished by the
29 contractor, or when the parties agree for full payment to
30 be made upon or for a schedule of payments to
31 commence after satisfactory completion of the project.
32 The contract shall contain, in close proximity to the
33 signatures of the owner and contractor, a notice in at least
34 10-point type stating that the owner or tenant has the
35 right to require the contractor to have a performance and
36 payment bond.

37 (h) No extra or change-order work may be required to
38 be performed without prior written authorization of the
39 person contracting for the construction of the home
40 improvement or swimming pool. No change-order is



1 enforceable against the person contracting for home
2 improvement work or swimming pool construction
3 unless it clearly sets forth the scope of work encompassed
4 by the change-order and the price to be charged for the
5 changes. Any change-order forms for changes or extra
6 work shall be incorporated in, and become a part of, the
7 contract. Failure to comply with the requirements of this
8 subdivision does not preclude the recovery of
9 compensation for work performed based upon
10 quasi-contract, quantum meruit, restitution, or other
11 similar legal or equitable remedies designed to prevent
12 unjust enrichment.

13 (i) If the contract provides for a payment of a
14 salesperson's commission out of the contract price, that
15 payment shall be made on a pro rata basis in proportion
16 to the schedule of payments made to the contractor by
17 the disbursing party in accordance with subdivision (e).

18 (j) The language of the notice required pursuant to
19 Section 7018.5.

20 (k) What constitutes substantial commencement of
21 work pursuant to the contract.

22 (l) A notice that failure by the contractor without
23 lawful excuse to substantially commence work within 20
24 days from the approximate date specified in the contract
25 when work will begin is a violation of the Contractors'
26 State License Law.

27 (m) If the contract provides for a contractor to furnish
28 joint control, the contractor shall not have any financial
29 or other interest in the joint control.

30 A failure by the contractor without lawful excuse to
31 substantially commence work within 20 days from the
32 approximate date specified in the contract when work
33 will begin is a violation of this section.

34 This section does not prohibit the parties to a home
35 improvement contract from agreeing to a contract or
36 account subject to Chapter 1 (commencing with Section
37 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

38 The writing may also contain other matters agreed to
39 by the parties to the contract.

1 The writing shall be legible and shall be in a form that
2 clearly describes any other document that is to be
3 incorporated into the contract. Before any work is done,
4 the owner shall be furnished a copy of the written
5 agreement, signed by the contractor.

6 For purposes of this section, the board shall, by
7 regulation, determine what constitutes “without lawful
8 excuse.”

9 The provisions of this section are not exclusive and do
10 not relieve the contractor or any contract subject to it
11 from compliance with all other applicable provisions of
12 law.

13 A violation of this section by a licensee, or a person
14 subject to be licensed, under this chapter, or by his or her
15 agent or salesperson, is a misdemeanor punishable by a
16 fine of not less than one hundred dollars (\$100) nor more
17 than five thousand dollars (\$5,000), or by imprisonment
18 in the county jail not exceeding one year, or by both that
19 fine and imprisonment.

20 (n) Any person who violates this section as part of a
21 plan or scheme to defraud an owner of a residential or
22 nonresidential structure, including a mobilehome or
23 manufactured home, in connection with the offer or
24 performance of repairs to the structure for damage
25 caused by a natural disaster, shall be ordered by the court
26 to make full restitution to the victim based on the person’s
27 ability to pay, as defined in subdivision (e) of Section
28 1203.1b of the Penal Code. In addition to full restitution,
29 and imprisonment authorized by this section, the court
30 may impose a fine of not less than five hundred dollars
31 (\$500) nor more than twenty-five thousand dollars
32 (\$25,000), based upon the defendant’s ability to pay. This
33 subdivision applies to natural disasters for which a state
34 of emergency is proclaimed by the Governor pursuant to
35 Section 8625 of the Government Code or for which an
36 emergency or major disaster is declared by the President
37 of the United States.

38 *Notwithstanding any other provision of law to the*
39 *contrary, an indictment or information shall be brought,*

1 *or a complaint filed, for a violation of this section, within*
2 *three years from the effective date of the contract.*

3 SEC. 1.5. Section 3260.1 of the Civil Code is amended
4 to read:

5 3260.1. (a) This section is applicable with respect to
6 all contracts entered into on or after January 1, 1992,
7 relating to the construction of any private work of
8 improvement.

9 (b) Except as otherwise agreed in writing, the owner
10 shall pay to the contractor, within 30 days following
11 receipt of a demand for payment in accordance with the
12 contract, any progress payment due thereunder as to
13 which there is no good faith dispute between the parties.
14 In the event of a dispute between the owner and the
15 contractor, the owner may withhold from the progress
16 payment an amount not to exceed 150 percent of the
17 disputed amount. If any amount is wrongfully withheld in
18 violation of this subdivision, the contractor shall be
19 entitled to the penalty specified in subdivision (g) of
20 Section 3260.

21 (c) Nothing in this section shall be deemed to
22 supersede any requirement of Section 3260 respecting
23 the withholding of retention proceeds.

24 SEC. 2. (a) The Legislature finds and declares that
25 buying a house and remodeling a home are the largest
26 expenditures that consumers typically make in their
27 lifetimes, and that current law leaves Californians
28 financially exposed in various ways with respect to
29 contractors of residential construction services, including
30 job abandonment, malfeasance, and injuries or accidents
31 that occur on consumers' property.

32 (b) In order to better protect consumers of residential
33 construction services, the Contractors' State License
34 Board shall hold a public hearing and shall recommend
35 ways to enhance consumers' financial protections when
36 contracting for residential construction services. A
37 detailed report shall be presented by the board to the
38 Legislature and the Governor by April 1, 1999.

O